

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE SECRETARY**

**IN THE MATTER OF:**

**HISTORIC RESTORATION,  
INCORPORATED**

**ORLEANS PARISH  
ALT ID NO. LAR10B954**

**PROCEEDINGS UNDER THE  
LOUISIANA ENVIRONMENTAL  
QUALITY ACT,  
La. R.S. 30:2001, ET SEQ.**

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**ENFORCEMENT TRACKING NOS.  
WE-CN-03-0623 and WE-P-03-0081**

**AGENCY INTEREST NO.  
100385**

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**SETTLEMENT**

The following Settlement is hereby agreed to between Historic Restoration, Incorporated (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), in settlement of Consolidated Compliance Order And Notice Of Potential Penalty, No. WE-CN-03-0623, and Penalty Assessment, No. WE-P-03-0831, pursuant to and under the authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

**I**

The Respondent owns and/or operates a real estate development and construction company contracted to design and develop the St. Thomas Redevelopment site located at intersection of St. Thomas and St. Mary Streets in the Lower Garden District of New Orleans, Orleans Parish, Louisiana. The Respondent was granted coverage under the Louisiana Pollutant Discharge Elimination System (LPDS) Storm Water General Permit For Construction Activities

LAR100000 on September 5, 2002, and specifically was assigned Permit Number LAR10B954.

This permit authorizes the discharge of storm water from construction activities into the storm water drainage system, thence to Lake Pontchartrain, both waters of the state.

## II

An inspection of the site was conducted by the Department on or about July 15, 2003.

The inspection revealed the following alleged violations:

A. The Respondent failed to implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) and the Best Management Practices (BMPs) required by the SWPPP. The inspector observed heavy rain carrying sediment off site and entering the storm drains. Photographs taken during the inspection revealed partially protected storm drains, and no silt fence installed to keep sediment on site. Trash and debris were also observed blocking storm drains. The streets were observed to have heavy amount of sedimentation on them. The Respondent's failure to implement a SWPPP and appropriate BMPs at the construction site to control pollutants in storm water discharges is in violation of LPDES Permit LAR10B954 (Part IV, Section D.2, and Part VI, Section A.1), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A., and LAC 33:IX.2355.A.

B. The Respondent failed to inspect the disturbed areas of the construction site at least once every 14 days, before anticipated storm events, and within 24 hours of the end of a storm event of 0.5 inches or greater. Each failure to conduct the required inspections is in violation of LPDES Permit LAR10B954 (Part IV, Section D.4, and Part IV, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

## III

On August 29, 2003, Consolidated Compliance Order And Notice Of Potential Penalty, No. WE-CN-03-0623, was issued to the Respondent for the alleged violations found during the inspection conducted by the Department on or about July 15, 2003. The Order required the Respondent to immediately take any and all steps necessary to meet and maintain compliance with LPDES permit LAR10B954. The Respondent made a timely request for an adjudicatory hearing regarding Consolidated Compliance Order And Notice Of Potential Penalty, No. WE-

CN-03-0623.

#### IV

The Respondent met with the Department on or about October 7, 2003, to discuss Consolidated Compliance Order And Notice Of Potential Penalty, No. WE-CN-03-0623. During the meeting, the Respondent presented mitigating circumstances concerning the violations cited in the Order.

#### V

Further investigation by the Department on or about October 9 and 10, 2003, revealed the following alleged violations:

A. The Respondent began demolition activities on the site on or about November 30, 2000, and began land-clearing activities on or about April 1, 2001. The respondent submitted the Notice of Intent to be covered under the LPDES Storm Water General Permit for Construction Activities on or about July 16, 2002. The Respondent's failure to submit its permit application prior to the commencement of construction activities on or about April 1, 2001, is in violation of La. R.S. 30:2076(A) (3), LAC 33:IX.501.A, and LAC 33:IX.2341.C.1.

B. The Respondent failed to properly install and maintain control measures on the site. Specifically, there were still disturbed areas of the site that had not been stabilized in some manner. In other areas, the silt fence was not properly maintained and therefore allowed sediment to leave the site from under the fence. In all the areas that silt fence was installed, the fencing was installed approximately three (3) feet back from the curb to allow the electrical contractors access to the light poles, but which also allowed the sediment on the outside of the fence to enter the storm drains. Turbid water was also observed entering storm drains on Josephine, Felicity, St. Thomas, and Rousseau Streets. The Respondent's failure to properly install and maintain erosion control measures on the site to control pollutants in storm water discharges is in violation of Consolidated Compliance Order and Notice of Potential Penalty, WE-CN-03-0623, LPDES Permit LAR10B954 (Part IV, Section D.2, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501A, and LAC 33:IX.2355.A.

## VI

A follow-up inspection conducted by the Department on or about October 20, 2003, revealed that the Respondent had fully addressed all the areas of concern noted in the previous inspections, and therefore was in full compliance with LPDES permit LAR10B954.

## VII

On October 20, 2003, Penalty Assessment, No. WE-P-03-0831, was issued to the Respondent for the alleged violations, as stated above. The Department assessed a penalty against Respondent in the amount of \$24,269.05. In response to Penalty Assessment, No. WE-P-03-0831, Respondent made a timely request for an adjudicatory hearing.

## VIII

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

## IX

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of \$20,000.00, of which \$1,801.64 represents DEQ's enforcement costs, in full and complete settlement of all of the claims and allegations of violations set forth in this Settlement, the Consolidated Compliance Order And Notice Of Potential Penalty, No. WE-CN-03-0623, and Penalty Assessment, No. WE-P-03-0831. The total amount of money expended by Respondent

on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

## X

Respondent further agrees that the Department may consider the inspection report(s), Consolidated Compliance Order And Notice Of Potential Penalty, No. WE-CN-03-0623, Penalty Assessment, No. WE-P-03-0831, and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

## XI

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

## XII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing

to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

### XIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

### XIV

An initial payment of \$10,000 is to be made within ten (10) days from notice of the Secretary's signature and a final payment of \$10,000 is to be made within sixty (60) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

## XV

In consideration of the above, any claims for penalties are hereby fully compromised and settled in accordance with the terms of this Settlement.

## XVI

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

HISTORIC RESTORATION, INC.

Wayne E. Clements BY: G. John Pelf  
(Signature)

A. Thomas Leonhard, Jr.  
(Printed)

Michelle Burkart

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 16th day of  
January, 20 04, at New Orleans, LA

[Signature]  
NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA

Mike D. McDaniel, PhD., Secretary  
Department of Environmental Quality

[Signature]  
Linda J. Houswright

BY: Harold Leggett  
Harold Leggett, PhD., Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 11 day of  
May, 20 04, at Baton Rouge, Louisiana

[Signature]  
NOTARY PUBLIC

Approved: R. Bruce Hammatt  
R. Bruce Hammatt, Assistant Secretary

ANDREA' Z. Jones  
#254266





CHARLES C. FOTI, JR.  
ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

April 29, 2004

Mike D. McDaniel, Secretary  
La. Department of Environmental Quality  
Office of the Secretary  
P.O. Box 4301  
Baton Rouge, LA 70821-4301

**RECEIVED**

**MAY 10 2004**

**LA Dept. of Environmental Quality  
LEGAL DIVISION**

Re: Review of DEQ Settlement;  
Historic Restoration, Inc.  
WE-CN-03-0623; WE-P-03-0081

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,



NICHOLAS GACHASSIN  
First Assistant Attorney General

NG/cbw